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REQUESTED BY: HONORABLE JOHN MICKELSON
Member, Arizona State Senate

OPINION BY: WADE CHURCH, The Attorney General

QUESTION: Must a County Board of Supervisors which passes a resolution requiring that all county offices be kept open nine hours a day, under the option provided in A.R.S. § 11-413.01, also provide sufficient personnel in these county offices so that A.R.S. § 23-281, which limits hours of employment of females to eight hours per day will not be violated?

CONCLUSION: Yes.

Until recently, all county offices in the state, with the exception of the criminal division of the sheriff's office, were open six days a week, but never for more than eight hours per day, under A.R.S. § 11-413. Under that statute, when the pressures of official business or illness left one person alone to run a county office for an entire day, there was no danger of violating A.R.S. § 23-281, which limits the working hours of women to eight hours per day.

In 1958 the state legislature passed A.R.S. § 11-413.01, which gives the board of supervisors in any county the option to require that all county offices be kept open for business a full nine hours per day, five days a week, but closed on Saturday. This new statute provides:

"§§ 11-413.01. Permissive five-day week

A. The board of supervisors in any county, in lieu of the provisions of § 11-413, may provide by resolution that county offices shall be open for the transaction of business each day from Monday through Friday only, if the board deems that service to the public will not be impaired thereby.

B. The resolution adopted by the board shall provide that every county office shall be open, except on legal holidays,

for the transaction of business from Monday through Friday, and shall establish a nine-hour period between the hours of eight o'clock a.m. and six o'clock p.m. during which such offices shall remain open; provided that the criminal division of the sheriff's office shall be open at all times. Added Laws 1958, Ch. 27, § 1."

In those counties which have elected to come under the provisions of § 11-413.01, some county offices are occasionally forced to either close the office for an hour a day or to require that a woman work the full nine hours, which would be in violation of A.R.S. § 23-281, which provides in part:

"A. No employer employing females in any labor other than domestic work shall employ or allow any female to work more than eight hours in any one day nor more than forty-eight hours in any one week, the eight hours to be performed in a period not to exceed thirteen consecutive hours. Every employer shall provide one full day of rest a week for all females in his employ. * * *

D. A person violating any provision of this section is guilty of a misdemeanor punishable by a fine of not less than twenty-five dollars or by imprisonment in the county jail for not less than thirty days, or by both."

These provisions are also, as to women employees of the state or a political subdivision thereof, an effectuation of Article 18, § 1, of the Arizona Constitution, which provides that:

"Eight hours and no more, shall constitute a lawful day's work in all employment by, or on behalf of, the State or any political subdivision of the State. The Legislature shall enact such laws as may be necessary to put this provision into effect, and shall prescribe proper penalties for any violations of said laws."

Honorable John Mickelson

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Clearly, the option given to a Board of Supervisors by A.R.S. § 11-413.01 to require that county offices remain open nine hours a day does not include an option to require violation of the health and welfare laws of the state. The Legislature did not intend that the hours of county offices be changed unless such a course would be both lawful and feasible.

Therefore, if it is impossible, in the exercise of good management, for certain county offices to avoid violation of A.R.S. ~~§23-218~~, the Board of Supervisors must either return to the six day week provisions of A.R.S. § 11-413 or else provide an adequate staff for these offices. This could be accomplished with part-time, occasional help from clerical personnel in most instances. An office which has at least one person from its staff, including the officer, deputies, clerks, stenographers and assistants, present to assist the public would be meeting the requirement of remaining open for the transaction of business.

23-281

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